

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOYCE L. SEIDLER and DOUGLAS SEIDLER, wife  
and husband, and the marital community composed  
thereof,

Plaintiff,

v.

HOLLAND AMERICA LINE – U.S.A., a Washington  
corporation; HOLLAND AMERICA LINE, INC., a  
Washington corporation; HOLLAND AMERICA  
LINE N.V., a Curacao corporation; and HAL  
ANTILLEN N.V., a Curacao corporation,

Defendants.

No. 2:18-cv-00364

**FRCP 35 STIPULATION AND ORDER**

**STIPULATION**

The parties hereby stipulate and agree as follows regarding defendants' request for  
an examination of plaintiff by a doctor selected by the defense.

**I. PLAINTIFF AGREES TO AN EXAMINATION BY A DOCTOR  
SELECTED BY DEFENSE COUNSEL**

1 The above captioned defendants (hereinafter “defendants HAL”) have requested that  
2 JOYCE SEIDLER be examined by a doctor chosen by defense counsel pursuant to Fed. R.  
3 Civ. P. 35. JOYCE SEIDLER agrees to be examined by a doctor chosen by defense counsel  
4 under the terms set out in this stipulation and Fed. R. Civ. P. 35.

## 5 II. IDENTITY OF EXAMINER

6 The exam shall be by DR. JOHN BURNS, (hereafter referred to as “examiner”).  
7 Examiner’s office address is Medical Dental Building, Machaon Medical Evaluations, 509  
8 Olive Way, Suite 1045, Seattle, WA 98101.

9 Defense counsel provided a copy of the examiner’s curriculum vitae to plaintiff’s  
10 counsel on 10/15/2018.

## 11 III. EXAMINATION OF PLAINTIFF

12 The exam shall take place on a date, time, and at a place agreed to between counsel.  
13 The estimated length of time for the exam and any testing is 1.5 hours.

14 The examiner advises defense counsel that the manner, conditions, and scope of the  
15 examination is as follows:

16 Interview, physical exam, and possible testing per the letter attached hereto as Exhibit  
17 A. The parties agree that no invasive testing will be permitted. To the extent the examiner  
18 requires any testing apart from x-rays, defenses counsel will apprise plaintiff’s counsel of the  
19 requested testing before the exam and such testing will be subject to the parties’ agreement  
20 or, in the alternative, a court order.

21 The plaintiff may have a representative present at the examination at no additional  
22 charge. She or her representative may make an audiotape or videotape recording of the  
23 examination at no additional charge.

1 The exam by the examiner shall be limited to inquiry in the field of expertise of  
2 examiner. The examiner shall not conduct an inquiry or examination in fields outside his or  
3 her expertise.

4 The examiner shall adhere to applicable professional and ethical principles and code  
5 of conduct.

6 The examiner shall not inquire into privileged attorney-client communications, and  
7 any inadvertent disclosure of such communications by plaintiff shall not be admissible and  
8 shall not constitute waiver of the attorney-client privilege.

9 No psychiatric or psychological tests shall be administered. No invasive tests shall  
10 be done. No tests that cause pain or injury shall be done.

11 The examiner advises defense counsel that plaintiff will not be asked to fill out any  
12 forms at the examination, nor will examiner ask any questions about who is at fault for the  
13 injury causing event. Such restriction does not limit questions about physical dynamics of  
14 the injury-causing event that may be relevant to injuries.

15 Defendants understand that there shall be no other exam in this case, absent a  
16 showing of good cause, as provided by Fed. R. Civ. P. 35, or the stipulated agreement of  
17 plaintiff.

18 In the event that any problems arise during the exam, the examiner shall contact the  
19 below referenced attorneys for plaintiff and defendants in an effort to promptly resolve any  
20 disputes. Plaintiff's counsel Alisa Brodkowitz' cell phone number is (206) 972-1623 and her  
21 office number is (206) 501-4446. Defense counsel's contact number is 206-467-4012.

22 **IV. EXAMINER'S REPORT**

1 Defense counsel shall deliver to plaintiff's counsel a copy of a detailed written report  
2 of the examiner setting out the examiner's findings, including results of all tests made,  
3 diagnosis and conclusions, regardless of whether the examiner will be called to testify at trial.  
4 Defense counsel will provide copies of any x-ray taken along with the report, at no charge to  
5 Plaintiff.

6 Examiner's report shall be delivered to plaintiff's counsel consistent with Fed. R.  
7 Civ. P. 35 and the parties' discovery plan.

#### 8 **V. DEPOSITION OF EXAMINER**

9 If plaintiff's counsel takes the deposition of examiner then examiner shall charge his  
10 ordinary hourly rate, or \$500 per hour, whichever is less, for the time actually taken for the  
11 deposition, as reported by the court reporter. Plaintiff shall not be charged for records review,  
12 or any other deposition preparation by examiner.

13 If requested, examiner shall provide to plaintiff's counsel a complete copy of all files  
14 and records related to plaintiff's examination. At the time of examiner's deposition, or earlier  
15 if requested, examiner shall make all files and records related to plaintiff's examination  
16 available for review by plaintiff's counsel.

17 The location of the deposition shall be the examiner's office, unless otherwise agreed  
18 between plaintiff's counsel and defense counsel.

#### 19 **VI. EXAMINER'S AGREEMENT TO TERMS OF THE EXAMINATION**

20 Defense counsel shall advise the examiner of the above conditions for the  
21 examination of JOYCE SEIDLER, and make sure the examiner agrees to follow all stipulated  
22 conditions, and to the following Court Order.

#### 23 **VII. STIPULATION**

{28872-00451556;1}

STIPULATION RE FRCP 35 EXAM – Page 4  
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1 The foregoing is stipulated and agreed to by the parties.

2  
3 DATED this 16th day of October, 2018.

4 **LE GROS BUCHANAN & PAUL**

**FRIEDMAN RUBIN PLLP**

5 By: /s/Nathan J. Beard

By: s/Alisa R. Brodkowitz

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9 *Attorneys for Defendants*

*Attorneys for Plaintiffs*

10  
11 SO ORDERED, this 17<sup>th</sup> day of October, 2018.

12  
13 

14 Robert S. Lasnik

15 United States District Judge